

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2568 of 2015

Arising Out of PS. Case No.-211 Year-2011 Thana- PATORI District- Samastipur

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1. Chandra Shekhar Pandey son of Late Indradeo Pandey
 2. Dharendra Kumar Pandey son of Chandrashekhar Pandey
Both resident of village and P.O. Dharampur Bande, P.S. Patory, District - Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Neeraj Kumar Son of Sri Koushal Kishore resident of village and P.O. Dharampur Bande, P.S. Patory, District - Samastipur

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. No. 2	:	Mr. Mukesh Kumar 1, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 12-04-2019

Heard learned counsel for the petitioners; learned APP
for the State and learned counsel for the opposite party no. 2.

2. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure, 1973 (hereinafter referred
to as the ‘Code’) for the following relief:

*“ That this application is being filed on behalf
of the petitioners for quashing the cognizance
order dated 25.8.14 passed by the Sri Sanjiv
Kumar, learned Judicial Magistrate, 1st Class
Samastipur, in connection with Patory P.S.
Case No. 211 of 2011, T.R. No. 3439/14 in
which the learned Judicial Magistrate has took
cognizance of the offence u/ss. 406, 419, 420,
323, 504, 506/34 of the Indian Penal code*



against the petitioners without applying his judicial mind.”

3. The allegation against the petitioners is that they were ploughing the joint property in which the informant-opposite party no. 2 also had a share and further that the Tractor bought by the petitioners was on forged documents. It was also alleged that whenever the opposite party no. 2 objected to such ploughing, the petitioners used to assault and abuse him and also give threat of killing him.

4. Learned counsel for the petitioners submitted that a purely civil dispute has been given the colour of a criminal proceeding, which is totally illegal and impermissible in law. It was submitted that the parties are agnates and even if the entire averments made in the FIR are accepted to be true, the same would not disclose any criminal offence, save and except, the vague and bald statement of assault and abuse. Learned counsel submitted that the opposite party no. 2, with regard to the ancestral properties, including the land in question, had filed Partition Suit No. 88 of 2009 before the Court below at Samastipur and in the same it was admitted that the petitioners were managing the ancestral properties and it was alleged that no information about the management was given to them and that the petitioners were also committing fraud and forgery leading to damage of the joint



family property for which partition suit was filed. Learned counsel submitted that prior to filing of the present case, the petitioner no. 1 had filed Patori P.S. Case No. 202 of 2011 on 09.10.2011 against the opposite party no. 2 and two others under Sections 341/323/307/379/504/34 of the Indian Penal Code and, thus, as a counter blast the present case has been filed on 17.10.2011. Learned counsel submitted that even in the present FIR, the date of occurrence has not been stated. Learned counsel submitted that in the aforesaid background, when absolutely no offence is made out and further whatever has been stated, clearly indicating a civil dispute with regard to partition of ancestral property and for which two years prior to the FIR, a partition suit, that too, filed by the opposite party no. 2 and his father, is pending, the criminal proceeding itself is an abuse of the process of the Court.

5. Learned A.P.P. submitted that though the Court below has taken cognizance, but from the materials on record and also the FIR, no criminal case is made out.

6. Learned counsel for the opposite party no. 2 submitted that though the matter may be civil in nature but even where there may be a civil cause of action, there can also be an actionable claim on the criminal side based on the same very set of facts. It was submitted that in the present case a criminal aspect is



clearly made out on the basis of the fact that the petitioners had assaulted and abused the opposite party no. 2, which cannot be said to be a civil dispute. It was submitted that even the Tractor, which was being used by the petitioners, was bought in the name of someone else and, thus, this also amounts to forgery which is a criminal offence. However, on a query of the Court as to how the opposite party no. 2 can espouse the cause of someone else in whose name the Tractor may have been bought, as it is he only who can claim that the same was not authorized by him or that the petitioners had committed any fraud with him, learned counsel could not give any reply.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

8. As has rightly been submitted by learned counsel for the petitioners, from the plain reading of the entire FIR no criminal aspect is made out with regard to the petitioners. Even the reference to assault and abuse is too general and omnibus to merit consideration. Thus, based solely upon and reference with regard to abuse and assault, which too is not supported by any evidence, clearly would not be enough to justify a full-fledged trial. Moreover, in the background of the facts and circumstances, as has



been submitted by learned counsel for the petitioners, and not controverted by learned counsel for the opposite party no. 2, when admittedly the lands are accepted to be managed by the petitioners, which statement has been made in the plaint of the title suit itself filed by the opposite party no. 2 and his father, nothing further remains to be proved that the issue is basically a dispute relating to partition of ancestral land. Further, when learned counsel for the opposite party no. 2 admitted that the Tractor was not bought in the name of opposite party no. 2, he is not competent to lodge any complaint before any authority, as it is only the person in whose name the Tractor has been bought, if he has any grievance against anybody, can move before the appropriate authority, but not the opposite party no. 2 in any case.

9. The Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335**, at paragraph no. 102, has enumerated categories where the Court ought to exercise its inherent power under Section 482 of the Code. The same reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the



following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the omission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.



(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

10. The present case, in the opinion of the Court, falls under categories 1 and 7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

11. Further, the Hon’ble Supreme Court in **State of Karnataka v. L. Muniswamy** reported as (1977) 2 Supreme Court Cases 699, at paragraph no. 7, has observed as under:

“7.....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would



justify the High Court in quashing the proceeding in the interest of justice.....”

12. In the aforesaid background, the Court finds that the present criminal case has been filed for oblique reasons and for wreaking vengeance against the petitioners and to harass them. The same, thus, is an abuse of the process of the Court.

13. Accordingly, the application is allowed. The entire criminal proceeding arising out of Patori P.S. Case No. 211 of 2011 (T.R. No. 3439 of 2014), including the order dated 25.08.2014 by which cognizance has been taken, pending before the Court below at Samastipur, stands quashed.

(Ahsanuddin Amanullah, J)

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